



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on March 24, 2009

Date of Meeting: January 6, 2009

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:37 p.m., on Tuesday, January 6, 2009, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

Regina Romero
Rodney Glassman
Karin Uhlich
Shirley C. Scott
Steve Leal
Nina J. Trasoff
Robert E. Walkup

Council Member Ward 1
Council Member Ward 2
Vice Mayor, Council Member Ward 3
Council Member Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor

Absent/Excused:

None

Staff Members Present:

Mike Hein
Michael Rankin
Roger W. Randolph
Mike Letcher

City Manager
City Attorney
City Clerk
Deputy City Manager

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Debra Counseller, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Presentation of the Western Access Video Excellence Awards (WAVE) to the producers and staff of Access Tucson. Sam Behrend and Mark Jordan accepted the awards.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 1, dated January 6, 2009, was received into and made a part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member Scott announced on January 14, 2009, at the Clements Center, Ward 4 would host the Get Street Smart Safety Strategies for People and Neighborhoods presented by the Meth Free Alliance.
- b. Council Member Romero announced Ward 1 would be having a Public Safety Town Hall on January 17, 2009 at El Pueblo Senior Center. There would be representatives from the Tucson Police Department Gang Outreach Unit, County Attorney's office, Sheriff's Department, State Attorney General's office and attended by the Assistant City Manager, Richard Miranda.
- c. Council Member Glassman declared that on January 7, 2009, Ward 2 would be hosting their 2009-2010 Budget Town Hall. This was an opportunity for residents in Ward 2 and throughout the community to meet with Assistant City Managers, Mike Letcher and Richard Miranda as well as Frank Abeyta, the new Director of Finance, to talk about the current and future fiscal years.
- d. Vice Mayor Uhlich said she would be joining the Dodge Flower Neighborhood Association residents on January 10, 2009 in their campaign entitled "You and I Let's Keep it Clean." They would be going door to door to ask for participation in improving the neighborhood and keeping it clean.
- e. Council Member Trasoff commended the Downtown Tucson Partnership for an extraordinary inaugural First Night on New Year's Eve, attended by more than thirty-five hundred Tucsonans. Council Member Trasoff said she hoped that this would become a tradition.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 2, dated January 6, 2009, was received into and made a part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

No report was given.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 3, dated January 6, 2009, was received into and made a part of the record. He asked the City Clerk to read the Liquor License Agenda.

b. Liquor License Applications

New License(s)

1. China Star, Ward 6
4780 E. Grant Rd.
Applicant: Tak Chow Cheng
Series 12, City 75-08
Action must be taken by: January 2, 2009

Staff has indicated the applicant is in compliance with city requirements.

2. Create Cafe and Catering, Ward 2
4660 E. Camp Lowell Dr.
Applicant: Lauri Fay Kaye
Series 12, City 77-08
Action must be taken by: January 3, 2009

Staff has indicated the applicant is in compliance with city requirements.

3. The Bamboo Club Asian Bistro, Ward 6
5870 E. Broadway Blvd., Suite #524
Applicant: Paul Jerome Lakers
Series 12, City 78-08
Action must be taken by: January 4, 2009

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a person and location transfer, Mayor and Council may consider both the applicant's capability, qualifications, reliability and location issues. (A.R.S. Section 4-203; R19-1-102)

c. Special Event(s)

NOTE: There are no special event(s) scheduled for this meeting.

d. Agent Change/Acquisition of Control/Restructure

NOTE: There are no agent change(s) scheduled for this meeting.

It was moved by Council Member Trasoff, duly seconded, to forward liquor license applications 5b1 through 5b3 to the Arizona State Liquor Board with a recommendation for approval.

Mayor Walkup asked if there was any discussion.

Council Member Glassman stated that, as it was the beginning of the year, he wanted to publicly thank Mothers Against Drunk Driving (MADD) for taking the time to meet with all the Liquor License applicants in Ward 2. MADD had shared its concerns as well as ensured that Ward 2 businesses were operating in the safest manner possible to prevent drunk driving and underage drinking.

The motion to forward liquor license applications 5b1 through 5b3 to the Arizona State Liquor Board with a recommendation for approval was carried by a voice vote of 7 to 0.

6. CALL TO THE AUDIENCE

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers were limited to three-minute presentations.

There were no speakers.

7. CONSENT AGENDA – ITEMS A THROUGH J

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda were received into and made a part of the record. He asked the City Clerk to read the Consent Agenda.

A. INTERGOVERNMENTAL AGREEMENT WITH PIMA COUNTY FOR THE BARRIO SAN ANTONIO NEIGHBORHOOD REINVESTMENT GRANT PROJECT

1. Report from City Manager JAN6-09-6 WARD 5

2. Resolution No. 21184 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for the Barrio San Antonio Neighborhood Reinvestment Grant Project; and declaring an emergency.

B. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR THE SANTA RITA PARK NEIGHBORHOOD REINVESTMENT PROJECT

1. Report from City Manager JAN6-09-5 WARD 5
2. Resolution No. 21185 relating to Intergovernmental Agreements; authorizing and approving Amendment No. 2 to the Intergovernmental Agreement between the City of Tucson and Pima County for the Santa Rita Neighborhood Skate Park; and declaring an emergency.

Roger W. Randolph, City Clerk, announced this item would be considered separately so the City Attorney could clarify the Amendment.

C. REAL PROPERTY: APPROVING A GROUND LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, FOR A WIRELESS CELLULAR ANTENNAE AT 9490 EAST SPEEDWAY BOULEVARD

1. Report from City Manager JAN6-09-9 WARD 2
2. Ordinance No. 10618 relating to real property; authorizing and approving the Ground Lease Agreement between the City of Tucson and New Cingular Wireless PCS, LLC, for a wireless cellular antennae located at the Speedway and Harrison Park and Ride, 9490 East Speedway Boulevard, Tucson, Arizona; and declaring an emergency.

D. FINANCE: WRITE-OFF OF UNCOLLECTIBLE ACCOUNTS RECEIVABLE

1. Report from City Manager JAN6-09-10 CITY-WIDE
2. Resolution No. 21186 relating to finance; authorizing the write-off of certain uncollectible accounts; and declaring an emergency.

E. ASSURANCE AGREEMENT AND FINAL PLAT: (S06-272) ELVIRA SUBDIVISION, MINOR SUBDIVISION, LOTS 1 TO 6 AND COMMON AREA "A"

1. Report from City Manager JAN6-09-8 WARD 1

2. Resolution No. 21187 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements in Case No. S06-272 and approving the final plat for the Elvira Subdivision Minor Subdivision, Lots 1 through 6 and Common Area “A”; and declaring an emergency.
 3. Staff recommends that the Mayor and Council approve the assurance agreement and the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- F. TUCSON CODE: AMENDING (CHAPTER 10) THE CITY EMPLOYEE POSITION COMPENSATION PLAN TO COMPLY WITH STATE LAW REGARDING MINIMUM WAGE INCREASE
1. Report from City Manager JAN6-09-7 CITY-WIDE
 2. Ordinance No. 10619 relating to the position compensation plan; amending Tucson Code Section 10-31 to comply with Arizona State Law; implementing minimum wage increase effective January 1, 2009; and declaring an emergency.
- G. FINAL PLAT: (S04-182) LIMBERLOST COMMONS (RCP), LOTS 1, 2, AND 4 TO 20 AND COMMON AREAS “A”, “B”, AND “C”
1. Report from City Manager JAN6-09-13 WARD 3
 2. Staff recommends that the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- H. FINANCE: AUTHORIZATION FOR THE ISSUANCE OF CLEAN RENEWABLE ENERGY BONDS
1. Report from City Manager JAN6-09-15 CITY-WIDE
 2. Ordinance No. 10620 an ordinance of the Mayor and Council of the City of Tucson, Arizona, authorizing and approving the execution and delivery of a Master Equipment Lease-Purchase Agreement and an Acquisition Fund and Account Control Agreement in connection with the Issuance and Sale of the City’s Clean Renewable Energy Bonds; approving negotiations with the purchaser of the Lease-Purchase Agreement; fixing the maximum aggregate principal amount and the maximum term of the lease payments to be made pursuant to the Lease-Purchase Agreement; declaring the City’s official intent to reimburse expenditures made prior to the execution and delivery of the Lease-

Purchase Agreement from proceeds of the Lease Purchase Agreement; and declaring an emergency.

Roger W. Randolph, City Clerk, announced this item would be continued to the meeting of January 27, 2009 at the request of Staff.

I. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE MENLO PARK NEIGHBORHOOD REINVESTMENT GRANT PROJECT

1. Report from City Manager JAN6-09-14 WARD 1
2. Resolution No. 21188 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for the Menlo Park Neighborhood Reinvestment Project; and declaring an emergency.

J. INDUSTRIAL DEVELOPMENT AUTHORITY: APPOINTMENTS TO THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TUCSON

1. Report from City Manager JAN6-09-16 CITY-WIDE
2. Resolution No. 21189 relating to the Industrial Development Authority of the City of Tucson; authorizing an amendment to the Bylaws of the Industrial Development Authority of the City of Tucson, increasing the size of the Authority's Board from seven members to nine members; and appointing Gary Bachman, Randi Dorman, Adam Weinstein and Nancy Lutz to the board of Directors of the Industrial Development Authority; providing for selection of the Board President by the nine member board, and declaring an emergency.

It was moved by Council Member Romero, duly seconded, that Consent Agenda Items A, C through G, and Items I and J, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Romero, Glassman, Scott, Leal, and Trasoff;
Vice Mayor Uhlich and Mayor Walkup

Nay: None

Consent Agenda Items A, C through G and Items I and J, were declared passed and adopted by a roll call vote of 7 to 0.

7. CONSENT AGENDA – ITEMS A THROUGH J

B. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR THE SANTA RITA PARK NEIGHBORHOOD REINVESTMENT PROJECT

1. Report from City Manager JAN6-09-5 WARD 5
2. Resolution No. 21185 relating to Intergovernmental Agreements; authorizing and approving Amendment No. 2 to the Intergovernmental Agreement between the City of Tucson and Pima County for the Santa Rita Neighborhood Skate Park; and declaring an emergency.

Council Member Leal said he understood the City Attorney had some clarification to provide.

Michael Rankin, City Attorney, said he wanted this Item to be considered separately to clarify that the Communication only told part of the story. He said this, in fact, was an Amendment to an Intergovernmental Agreement (IGA) which would add a total of two hundred, fifty thousand dollars in additional County bond funding, which included forty-seven thousand dollars of the Neighborhood Reinvestment funds as described in the Communication. It also included an additional two hundred, three thousand dollars of additional Pima County bond funding. Mr. Rankin said the IGA and Resolution as attached were accurate, but the Communication was incomplete.

Council Member Leal said it was easy to lose track of some of the details because, figuratively speaking, the trail to the Skate Park was a long one, and there had been many sign posts and stops along the way. Due to the goodwill of many people, everyone had been able to keep their eyes on the prize, sweeten the pot and come to the point where they were ready to initiate this phase. It would be a significant addition, not just to the downtown area, but with the focus on children. Council Member Leal said this was a “phase” because the project was so big it had to be broken into two phases. Work would begin on the second phase as soon as the groundbreaking was done on the first one, and everyone would be invited to it.

It was moved by Council Member Leal, duly seconded, that Consent Agenda Item B be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Romero, Glassman, Scott, Leal, and Trasoff;
Vice Mayor Uhlich and Mayor Walkup

Nay: None

Consent Agenda Item B was declared passed and adopted by a roll call vote of 7 to 0.

9. APPEAL: (S-08-17) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION – KABABEQUE, 845 EAST UNIVERSITY BOULEVARD #185 (MAYOR AND COUNCIL APPEAL CASE NO. S-08-003)

(NOTE: This item was taken out of order.)

Mayor Walkup announced City Manager's communication number 12, dated January 6, 2009, was received into and made a part of the record. This was an Appeal on a decision of the Sign Code Advisory and Appeals Board (SCAAB).

Roger W. Randolph, City Clerk, announced that the City Attorney would first summarize the procedural question presented in this case and the nature of the action.

(NOTE: Council Member Glassman departed at 5:59 p.m.)

Michael Rankin, City Attorney, said this was an Appeal of the SCAAB decision to deny a variance request. The Appeal was limited to the record. This meant that in reviewing the decision of the Board, the Mayor and Council could consider the transcript of the Board's proceedings, together with the Exhibits that were given to the Board and the argument that would be heard during the hearing that evening. He said the Mayor and Council could not base a decision upon new evidence that was not presented to the Board. At the conclusion of the hearing, the Mayor and Council could uphold, reverse or modify the decision of the Board. If the Mayor and Council chose to reverse the decision of the Board and grant the requested variance, the Mayor and Council needed to make the findings necessary to grant a variance which were listed on page two of the Communication.

(NOTE: Council Member Glassman returned at 6:01 p.m.)

Mr. Randolph stated the order of the Appeal would be as follows: the Appellant, A.J. Lee for Addisign for the property located at 845 East University Boulevard, #185, owned by the Marshall Foundation. Following that, opposition to the Appeal presented by an affected neighbor or one designated representative of the affected neighbor speaking in support of the SCAAB decision. There would then be a rebuttal by the Appellant. Other rebuttals would follow, as provided by Mayor and Council. The

governing body may question the party following the Appeal or direct questions to staff in order to establish reasons for granting or denying the Appeal. After the presentation, the Mayor and Council could discuss the case and act on it.

Mr. Randolph stated the time limit for argument was ten minutes for each side. Parties could use that ten minutes either in direct or indirect address to the Mayor and Council or in rebuttal; they could divide it any way they chose, however the time limit would be ten minutes. The evidence to be considered was the verbatim transcript of the SCAAB hearing. No new evidence or testimony would be allowed. Mayor and Council could also consider the argument of the parties in reaching a decision. Mr. Randolph announced the first order would be for the Appellant, A.J. Lee for Addisign.

Mike Addis, representing A.J. Lee, and the owner, Kababeque, thanked staff and said they appreciated their recommendation. They went through a process of approval through the West University Historic group, the Tucson-Pima County Historical Commission, and the Marshall Foundation, and also received the recommendation from staff and went before SCAAB, at which time their request was denied. He pointed out in the variance submittal, there were other variances which were alluded to and he submitted information that he thought clarified the breakout of the previous cases listed in their materials.

Mr. Addis said they were dealing with a location at the University of Arizona, where several businesses had been granted a variance. On the photo page distributed, Pei-Wei, Penguin's, Gentle Ben's and La Salsa were examples of the others who were caught in this district which extended to Tyndall Avenue. On the east side of Tyndall Avenue, it turned back into the business district that was not affected by the restriction of eight total square feet for signage. Across the street, the Geronimo Plaza was not affected by this. Mr. Addis said there was a very isolated pocket of businesses that were affected and as such, they had gone before the Board of Adjustment in order to receive relief, which many or all of them had received. This individual business, Kababeque, was doing just that.

Mr. Addis stated a small spreadsheet was created which showed the variances that were approved: Pei-Wei was fifty-two square feet of available signage, Penguin's was thirty-two, La Salsa was forty-one and Gentle Ben's was two hundred square feet. The Code allowed eight square feet which simulated the under-canopy sign. Additional signage granted by variance was listed as forty-four, twenty-four, thirty-three and one hundred ninety-two square feet, respectively. He said the number of feet for the store frontage and the additional square footage granted by the variance per foot of store frontage could be seen on the sheet. This was broken out as a relation or ratio, which averaged 1.49, and what was being requested for Kababeque was approximately .81. Mr. Addis said a unique hardship existed because of the split zoning and because they were located at the end of the section with an alleyway and were difficult to see with the tree that was in front of the business.

Mr. Addis concluded by saying he hoped Mayor and Council would make findings necessary to grant the variance for this business. He said he hoped the photos he submitted gave an element of clarification and that they would follow staff's recommendations.

Mr. Randolph said the next item would be any opposition to the Appeal presented by an affected neighbor or one designated representative of the affected neighbors.

Tom Warne said he would like to speak after the vote. He said he was not in opposition, but was a developer of the area who requested to have his voice heard.

Mr. Randolph said, hearing no opposition, the Applicant could have a rebuttal.

Mr. Addis said that attached to the photo pages were signatures of individuals who saw the identification that was granted under a banner for the business. This had been presented to SCAAB at the second meeting.

Mr. Randolph said the next item would be for the governing body to question the party filing the Appeal or direct questions to staff to establish the reasons for granting or denying the Appeal. He added that if there were no questions, the governing body could discuss the case or act on it.

Council Member Trasoff said she thought the lack of opposition spoke volumes. This request by Kababeque was typical of the other restaurants and businesses in that area, each of which had been granted Sign Code variances. In this particular case, it was important to note that SCAAB voted three to two in favor of the request, but they did not have enough people there, and four votes in favor were required. Council Member Trasoff said she believed this was the only reason it was denied. Given the circumstances, she thought it was appropriate to reverse the decision.

It was moved by Council Member Trasoff, duly seconded, to reverse the decision of the Sign Code Advisory and Appeals Board, thereby granting the Applicant's request.

Mayor Walkup asked if there was further discussion.

Council Member Glassman declared that while this was an open and shut kind of case with no opposition, he wanted to point out that in a time of economic trials and tribulations for the community, anything the Mayor and Council could do with regard to signage and making it easier to do business in Tucson was something that should definitely be pursued. He said this was an easy example of that and he looked forward to the Council working with local businesses over the coming months to do other things to make sure that business could be successful in the community.

Mr. Rankin stated, as part of the Motion, it was implied but should be stated that by voting to grant the variance, the Council was making the legislative findings which were required as listed in the Communication.

Council Member Trasoff said the vast majority of those findings were relevant to this case.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a voice vote.

The motion to reverse the decision of the Sign Code Advisory and Appeals Board, thereby granting the Applicant's request, was carried by a voice vote of 7 to 0.

Tom Warne said, having worked closely with Mayor and Council on the Certificate of Occupancy and also having been invited by the City to be part of the *Land Use Code* review, he appreciated the leadership just shown. Mr. Warne stated this item was taken to the Historic Review Board within the West University Neighborhood Association (WUNA), the neighborhood meeting, and the Tucson-Pima County Historical Commission's Plans Review Subcommittee, each time receiving a unanimous vote. It was subsequently taken to SCAAB where it received a majority vote, although there was no quorum. They appealed twice, which they were allowed to do, and also received a majority vote but they were not able to have it reversed because they did not have a quorum. He said Council Member Glassman's remarks were well stated. Mr. Warne reiterated that there needed to be quality development and it needed to be made so it was business friendly and business people were invited to make investments. Doing this, and working closely for about fifteen years with WUNA, from day one, he said it improved the value and quality of the neighborhood.

Mr. Warne said, by law, the Marshall Foundation gave five percent of its net assets to charity every year and they had built up their asset base quite a bit so all the money stayed in the City of Tucson. He said this was the ninth time he appeared before Mayor and Council since the early 1990s regarding the Main Gate Development, and they had never received a negative vote from the Mayor or any Council member and he thanked them for that.

8. PUBLIC HEARING: APPEAL HISTORIC PRESERVATION ZONE CASE HPZ 08-21 STOKES, 933 NORTH 6TH AVENUE

Mayor Walkup announced City Manager's communication number 11, dated January 6, 2009, was received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on an Appeal of the Development Services Department (DSD) Director's decision on a Historic Preservation Zone (HPZ) case. The Appellant was Edward Stokes, personal representative of the Estate of George Stokes.

Mayor Walkup asked the City Clerk to read the order of the Appeal.

(NOTE: Council Member Glassman departed at 6:27 p.m.)

Roger W. Randolph, City Clerk, said this item would begin with the City Attorney summarizing the procedural questions presented in this case.

Michael Rankin, City Attorney, stated that, as described in the Communication, this was an Appeal of the DSD Director's decision to deny the Appellant's HPZ application. That decision was based on the recommendations of the West University Historic Preservation Zone Advisory Board and the Plans Review Subcommittee of the Tucson-Pima County Historical Commission.

(NOTE: Council Member Glassman returned at 6:31 p.m.)

Mr. Rankin said the procedure for this Appeal was provided under Section 23A-62 of the Development Compliance Code which was also included in Mayor and Council materials. This Code provided that Mayor and Council hold a public hearing on the Appeal and reach a decision following the close of that public hearing. If necessary, the Mayor and Council could continue the public hearing for up to forty-five days. The Mayor and Council should decide the Appeal based on the application, the testimony, the evidence and other materials that were considered in the prior proceedings, together with the City Manager's Communication and the testimony and evidence that would be presented during that evening's public hearing. The Mayor and Council were to consider the provisions, purposes and intent of the HPZ regulations that applied to this Appeal.

Mr. Randolph said the DSD Director would present a report and summary of the request that was before Mayor and Council.

Ernie Duarte, Development Services Department Director, stated the request was an Appeal to his decision to deny historic preservation approval. The Applicant replaced roofs on three contributive structures in a national register and did so without the benefit of development review and permitting. The work being done was brought to the attention of DSD and the Department of Neighborhood Resources (DNR) as a potential zoning violation. DNR did, in fact, open a zoning violation case. The cure to that zoning violation was to seek approval for the proposed work as part of the review process. As presented before, the review was done by the West University Historic Preservation Zone Advisory Board as well as the Tucson-Pima County Historical Commission (T-PCHC). Both of those bodies, as well as the Design Review Board (DRB), recommended denial of the application and thus were the basis for his decision on the case.

Mr. Randolph said the order of the Appeal was as follows:

- 1) The Appellants would present their Appeal.
- 2) There would then be a response from City staff, if any.
- 3) Any input from any member of the public.
- 4) There would be other rebuttal as permitted by Mayor and Council.

- 5) The Mayor and Council could direct any questions to parties appearing before them or any other persons who might have relevant information in order to establish the reasons for the decision.
- 6) After the close of the Public Hearing, Mayor and Council might discuss the case and would reach a decision.

Edward Stokes stated that in July of 2007, his father suddenly passed away. It was July and one of the first calls he received was from the tenants at this building saying that the roof still leaked. He remembered when he bought this house with his father in 1990 it still had the same roof. The Estate was open and they did what they could. The January rains came along, and the house was leaking even worse. His estate attorney recommended he preserve the asset as well as he could. He said he believed in historic preservation and was on the Sam Hughes Board historic subcommittee.

Mr. Stokes said on approximately February 19, he got a quote to re-roof the structure. The re-roofing was based on three things: his wanting the roof to outlast him probably one hundred years, and wanting to add insulation. The buildings had the ceilings removed so one was looking at shake shingles in the two apartments on that floor. He also wanted the roof to be good for water harvesting and solar hot water; he wanted the roof to outlast that. He said he wanted the best roof possible. Because there were no ceilings or insulation, roofers recommended he put a deck on it, then rigid insulation and then metal, to create a sandwich. He said he thought that was the best solution given that he could not put wood shake back on because it was a commercial property and he would not be allowed to get insurance. Mr. Stokes said his personal home had wood shake shingles and his insurance company had told him he needed to change them as quickly as possible, so he believed the information he received about the wood shake. At no time did he think about putting asphalt shingles on because it did not make sense, because of the insulation and that they had to be replaced every fifteen years in Tucson, which led to landfill issues.

Mr. Stokes said he went around, got some quotes and started the work. His due diligence was to look on the West University Neighborhood Association (WUNA) web site to see what was going on, to see historically, if anything was unique. He did not see anything there at the time, but they have since changed that. He went to the City web page to see if he needed a permit to re-roof and as an engineer, he did not see any reason to not believe what the web page said, that he did not need a permit. Mr. Stokes said he then checked the zoning on the property which was HR-3. He understood the R-3 but did not understand the H. He still could not find out what the H meant; it was not listed on any web sites anywhere.

Mr. Stokes said he went ahead and re-roofed, without a permit, without anything. He got to about March 8, about ninety percent complete, and on April 7, he received his violation notice. At that point, the roof was ninety percent done and he did not know what to do except finish it. He now had a roof with an R-value of thirteen, instead of one. Mr. Stokes said he was not aware WUNA was a local historic district versus Sam Hughes which was a national one. He said his was a commercial property and he did not receive

any tax breaks so he was not worried about losing his tax breaks. He did pick a material which, although not asphalt shingles, looked just like the dull, gray asphalt shingles that would be on the roof. He said he was not aware of the HPZ because his building was not owner-occupied. He stated he lived in Tucson and the City knew he now represented the Estate that owned the building, yet he still did not receive any WUNA newsletters as he would those of Sam Hughes.

Mr. Stokes said he was not aware of the design guides until Frank Podgorski of DSD provided them to him on May 8, when the roof had been completed for a month. He said he agreed with everything in them, except that they were written in March 1986 and might be a little dated. He added that he believed metal was the best roofing material in the southwest; it was durable and energy efficient. To tear the roof down would add two roof loads to the city dump and then another load of roof material every fifteen years. Mr. Stokes said it was a green roof, and he spent the Estate's money of thirty-five thousand, three hundred fifty-two dollars on it. He said it was a good roof and to tear it off and replace it, combined with the loss of rent and two good tenants, would be another twenty thousand dollars in his estimate. He stated he was willing to do anything at that point to keep the roof. He admitted that not getting the permit was the snowball that started everything. If there was a mistake, he made it and he was present that evening to try and avoid much more expense.

Mr. Randolph asked if there was any response from City staff. Hearing none, he said the third item would be input from any member of the public.

Lori Boston said she was President of the West University Neighborhood Association and a member of the West University Historic Zone Advisory Board (WUHZAB). She was also a homeowner and resident in the neighborhood and West University Historic Zone. She stated she was there to oppose the Appeal and request Mayor and Council uphold the DSD Director's recommendation to deny the Appeal. The roof needed to be remedied for a few reasons. In the *Land Use Code* there was an outline for the Historic Preservation Zone. There were guidelines for historic review and guidelines specific to what should be done on a contributing property in accordance with the historic nature of the home and also within the development zone, those surrounding the houses in the area of the house in question where an addition would be made.

Ms. Boston stated the Appellant did not go through the historic review process and therefore did not put on a roof that fit in with the development zone of the West University Historic Zone and also with the historic nature of the contributing structure which was 933 North Sixth Avenue. She added that if the roof were allowed to remain, that would be setting a precedent for anyone to basically say he or she did not know, or could ignore the review guidelines or the *Land Use Code*, and then appeal to Mayor and Council to be allowed to keep what was done incorrectly. This precedent would essentially say to anyone that the Historic Preservation Zone was meaningless. If it was in the *Land Use Code*, she said this needed to be upheld.

Ms. Boston said she knew that the WUHZAB had an ad hoc committee looking at the guidelines currently in existence and figuring out what needed to be done to update them from 1986 and also what materials could be allowed to make the historic district more sustainable. She said they were looking to the future and looking at revising those guidelines. As they stood, she said she thought it was very important that they be upheld as they were.

Ms. Boston summarized comments from Jim Bly, the Chair of WUHZAB, who stated the West University Neighborhood was a Historic Preservation Zone. This designation required any modification of the exterior of the building in the zone to go through the historic review process. Recently WUHZAB had a lot of zoning violations come through where people did not follow that process. The case before them concerned modifications outside the review process. If they were allowed, then the historic review process would become meaningless and homeowners would make any modification they wanted without consideration of the historic nature of the property. There were several other zoning violations currently before their Board. The Historic Preservation Zone currently in existence would only continue to exist as long as at least fifty percent of the properties were contributing. With regard to the current zoning violations and ones they did not even know about, if they were allowed to continue, the non-compliant modifications could endanger the Historic Preservation Zone. Ms. Boston said she personally felt that would be a detriment to the City of Tucson because she thought the City was unique in that it had five local historic zones plus several nationally recognized historic districts. She said she thought it was one of the unique aspects about Tucson and it would be a shame to set a precedent that would start to decline the historic nature of the City and those neighborhoods. Resuming Mr. Bly's comments, Ms. Boston said the WUHZAB was out of existence for a few years. The West University Neighborhood was told that the City wanted the Board to re-form so that it would have neighborhood input on preservation of historic structures. This was a chance for Mayor and Council to show WUNA that it valued its input and also to accept and support it.

Noah Sensibar, a member of WUHZAB, said when he saw the metal roof going up in its early stages, he knew it was against the guidelines, so he went home that day, and went online to the Pima County Assessor's web site and found the owner of the property. At that point, the listed owner was Edward Stokes. He called and spoke to Mr. Stokes and informed him that he believed the roof he was putting on would not be approved if it was brought to the Historic Zone Advisory Board. Mr. Sensibar said he suggested Mr. Stokes stop work and seek the approval of the Board. Mr. Stokes informed Mr. Sensibar that he was on the Sam Hughes Historic Preservation Board and he knew what he was doing. Mr. Sensibar said he suggested that Sam Hughes was not one of the five historic districts that had a preservation board and suggested he call Frank Podgorski, DSD Lead Planner, before continuing to roof the main house. At that point, the conversation ended.

Mr. Sensibar said that for Mr. Stokes to tell Mayor and Council he had no knowledge when he roofed the main house was less than fully accurate. He said in the audience that evening were other members of the WUHZAB: Barbara Macri,

Jim Phillips, and Dave Knudson, all who sat on the Board, and were there to oppose the Appeal.

Gallagher Witmer stated that she was a West University homeowner, architect, member of the Tucson-Pima County Historical Commission (T-PCHC), and Vice-President of WUNA. She said the West University Board did issue a letter on this topic. In her travels, she said she spoke to Brooks Jeffery about what was going on. Mr. Jeffery was an advocate of these issues and submitted a letter he wrote on their behalf stating he supported their position against granting the Appeal. Ms. Witmer read from the West University Board's letter, adding there were two other zoning violations which stated they would come to appeal so they were also listed in the letter. She said the letter was written on behalf of WUNA regarding the three zoning violations which would be coming in front of Mayor and Council for appeal. WUNA worked to establish the national register status of the West University Neighborhood in 1984 to preserve the historic qualities of the homes and area. The HPZ process was the mechanism that had served to protect them since its creation. WUNA's understanding was all three of these cases involved the avoidance of the HPZ process to perform remodeling which was not consistent with the HPZ section of the City of Tucson *Land Use Code* and its rulings. While they were sympathetic to the homeowner's situation, they must protect the HPZ process, their national register status and the generous tax credit from which many of the area households benefited. Additional losses of contributing homes from this district could not be allowed. WUNA was aware and invited the proposed review of the existing HPZ Code sections and guidelines to incorporate more energy efficient and sustainable practices. WUHZAB had a subcommittee established for much of the year reviewing possible alternative materials and practices in anticipation of this process. This process should not be clouded by requesting to find solutions to make these installations compliant. The process that HPZ and future Neighborhood Preservation Zone (NPZ) zones counted on for protection of the unique qualities of the neighborhoods should not be undermined.

Ms. Witmer said she would not read Brooks Jeffery's letter, but stated that it spoke very eloquently of the importance of this issue and the uniqueness of different areas in the City. In the West University Neighborhood, it was not historically appropriate to have a metal roof on the main house. She said she did not wish to repeat what Ms. Boston and Mr. Sensibar already said; she wanted to speak on another point which was important to her. She took part in the NPZ stakeholders committee meetings. One of the biggest things she learned was that an HPZ was very valuable when next to the University of Arizona. She said they loved the quality of their neighborhood as a suburb of downtown and they were trying to hold on to that through development. They welcomed development but what were needed were mechanisms to hold on to their neighborhood. The HPZ was one of the things that so many neighborhoods like Jefferson Park and Feldman's would love to have. She said it was very dangerous to them that more homes could fall into being non-contributing properties. She saw this as a homeowner who went through this process, an architect who had to make people follow the process and as a reviewer on the T-PCHC. There was a family that came in front of the T-PCHC within a year before Mr. Stokes, and wanted to put a metal roof on their home, perhaps a block and a half down. Ms. Witmer said they were from California and

she did not know how the family knew to come to them but they did; they found the process. It was unfortunate that they did not understand it, but they complied. She said she often thought of all the people who went through the process, and she really encouraged people to get involved if they did not like the process, to help change it. She added they wanted to bring sustainability, and encouraged Mayor and Council to keep everything in place and let them go through the proper process.

Brian McCarthy stated that he lived in the West University Historic District. His house was built in 1920 and had been in his wife's family for sixty-five years. He said they lived in the neighborhood because they liked the location, the neighbors presented an interesting mix of people and they enjoyed the historic buildings by which they were surrounded. In order for the buildings to remain in their historic aspect, certain regulations were necessary, which were reasonable, and not hard to follow. He said if regulations were not enforced, they were obviously worthless. Therefore, he asked Mayor and Council to follow the law and uphold the decision of the Historic Zone Advisory Board in the case before them tonight.

Kathy Nabours said she did not reside in the City of Tucson but was a member of T-PCHC, a landscape architect, a native Tucsonan and a realtor. She said she looked at the house with the Commission and in her opinion, it was atrocious. The roofing on the house was just atrocious in any neighborhood. It did not add to the value of the house, nor did it add to the value of the neighborhood. Ms. Nabours said with respect to the historic preservation and the points everyone else made, she was opposed to this Appeal.

Demien Clinco, a member of T-PCHC and its Plans Review subcommittee, stated he was also the President of the Tucson Historic Preservation Foundation and was a consultant in historic preservation. He said the HPZs had been very successful in the *Land Use Code* and policy for the City of Tucson for the last thirty years. They cultivated some of the best urban historic neighborhoods in the City. Growing up in Tucson, he went to school in West University for first and second grades and they used to walk from their school to the park. It was a collection of burnt out houses and deferred maintenance issues. Over the last thirty years, the HPZs protected and preserved and cultivated such rich dynamic neighborhoods as Armory Park, West University, El Presidio, Barrio Viejo and Fort Lowell, which all benefited tremendously. He said he thought part of the benefit was because it weighed the value of the individual against the value of the community. If he were buying into one of the historic preservation zones, he knew, with confidence, he could invest heavily into restoring his home and the house next door would not be torn down or have an incompatible addition added to the front or use incompatible materials. He said he thought to overturn the Appeal and approve it would be very detrimental to the future of historical preservation in the community because it was easy to point to the fact that someone else had gone through and gotten away with it. Again, he would discourage approving the Appeal.

Mayor Walkup asked if there was anyone else wishing to be heard on this item.

Chris Ganes said he lived in West University for thirty years and had seen a lot of good and bad changes. A lot of the good ones involved people coming in and really putting TLC into their homes or the properties they bought and he wanted to see that continue. Doing things outside the historic review helped tear apart the fabric of the neighborhood and he asked Mayor and Council to deny the Appeal and support neighborhoods, not just his neighborhood but all historic neighborhoods in downtown Tucson. He said they were all a part of the jewel of downtown and that needed to be maintained because there was nothing like it anywhere else.

Mayor Walkup asked if there was anyone else who wished to speak. Hearing no one, he asked if there was rebuttal to any of the comments that had been made.

Edward Stokes said, as a member of the Sam Hughes Historic Preservation subcommittee, he thought HPZs were great. He did not follow the process because he did not know what it was or that it even existed. He said he did the same exact process he would have done on the other side of the University. He talked to the State about the metal roof and they said it would not drop him from being a contributing property. Although he did not get any benefit for contributing, he wanted to make sure he would not be dropped because Sam Hughes was going through the same issues such that it did not want to lose contributing properties and lose its status. He said he was cognizant of that. His biggest mistake was that he did not get the permit. If he had, all the triggers would have gone off and he probably would not have put on a metal roof. The fact was that he did. To offset the previous opinion, his opinion was that it was a gorgeous roof. The fact that there were a bunch of appeals coming might be an indicator that something needed to be tweaked and he really wished it was not himself. He said it was a big deal for him since it was a financial hardship and he appreciated any thought and consideration given to him.

Mr. Randolph said that, as per Item 5, Mayor and Council could direct any questions to the parties appearing before them or any other persons who might have relevant information in order to establish the reasons for the decision.

Vice Mayor Uhlich said she might have to direct her comments to staff or members of the Tucson-Pima County Historical Commission but she assumed that there was no way of adapting the existing roof with a different surface type or something to prevent the removal of the entire structure but to somehow change the appearance or compliance in that manner.

Mr. Duarte said that in dealing with metal roofs, the removal was cedar shake shingles which was a real thick material and had a stair step effect. Metal roofs really did not replicate that but he said he would defer either to his staff who had been involved or members of the Historic Zone Advisory Board to speak about this specific installation.

Vice Mayor Uhlich said the question would be whether any shingling could be done. She was trying to find a way of meeting the criteria. She assumed that would have been raised during this whole process but she wanted at least to ask the question, for the

record, whether appropriate shingling could be placed on top of the existing structure or whether there was any way that could be done. She said it sounded as though the answer was no.

Mr. Duarte stated that it would be difficult to find a roofing contractor who would want to apply a shingle-type roof over a metal roof and warranty the work.

Council Member Scott asked Mr. Duarte if there was any method whatsoever, perhaps painting or allowing the roof to rust or to have a different appearance over time that could occur with the particular roof that was installed, or would it always be the same color.

Mr. Duarte said, in the Tucson environment, it was very common for oxidation to occur. How fast that took place was difficult to quantify or measure, but it would eventually change.

Council Member Scott said the Hardesty Building had some metal to it and it had changed colors since it was first put in place. She wondered if it was the same type of change that might occur with this roof in place over time.

Mr. Duarte invited Jonathan Mabry from the Department of Urban Planning and Design not to speak about the changing metal roofs, but to speak to the fact that metal roofs were not used during this era when construction took place.

Jonathan Mabry, City of Tucson Historic Preservation Officer, said he followed this case closely. He said the issue was that the references for compatibility were the development zone, the surrounding properties, and also the design guidelines of the HPZ. This metal roof did not fit those, and as stated by Mr. Duarte, it was historically inappropriate.

Council Member Scott questioned Mr. Stokes's comment about speaking to someone from the State and that the State would allow it.

Mr. Mabry said he did not know to whom Mr. Stokes spoke, but was told it was Eric Vondy, the administrator of the historic tax credit program at the State Historic Preservation Office, who was not informed about the local HPZ design guidelines. For the purposes of the State tax credit program, a metal roof was allowable, but Mr. Vondy was unaware of the design guidelines for the HPZ. Mr. Mabry said he wanted to hold out a glimmer of hope for the property owner for any changes he might make to the roof, because Mr. Stokes was eligible for a State historic tax credit for income producing properties. If he received pre-approval of his planned changes to the exterior, which included the roof, then the value of his investment was assessed at only one percent of the market value for a period of ten years. Mr. Mabry wanted to let Mr. Stokes know about that and said he would be happy to provide more information.

Council Member Scott said she appreciated those comments and was very sympathetic to a person who was taking care of his father's estate and trying to make a good living habitation for the people there. On the other hand, the argument was it did not fit the historic nature of the area so it was a really difficult personal versus historic type of thing which made it difficult for some of the Council who were trying to find a way to help this family but on the other side, the historic argument had a very strong point.

Council Member Trasoff asked Mr. Mabry to remain. She said that a couple of the speakers mentioned setting a precedent if one roof was let by. She was more concerned if they lost the fifty-one percent contributing properties. She asked what impact that would have on everybody else in that neighborhood.

Mr. Mabry said that in addition to this neighborhood being a local Historic Preservation Zone, it had designation as a National Register Historic District. The great thing about that was the availability of a very valuable tax credit to the owners of contributing properties in that district which he gave an example of earlier. For owner occupants, there was a State historic tax credit where one could get up to forty percent off property taxes annually. The idea behind that was to free up that money so the property owners could maintain their property in a historically appropriate way. The concern which was voiced by the residents of the neighborhood was that over time, when there was a loss of contributing properties to the district, the district would erode. One case might not make a difference but over time, the cumulative effect was that the neighborhood would eventually drop below the requirement that fifty-one percent of the properties inside the boundaries be contributors to the historic district. If it dropped below that threshold, then all the property owners would lose that very valuable tax credit. Mr. Mabry said he really felt for this individual, but he also felt for the neighborhood.

Council Member Trasoff said Mr. Mabry described the roof as just not being compatible with construction at that period of time and therefore not historic. She said she knew revisions were going to be made but from what she understood, most of the revisions and the updating of the *Code* might address how some of the windows that were supposed to be metal could be fitted with an acceptable vinyl that looked similar. She asked if anything of this significance might be allowed.

Mr. Mabry said staff was currently working on researching how they could update the development standards in the HPZs for a number of reasons, but one of the biggest reasons was to allow more flexibility for green retrofitting of these historic buildings. It would be a balancing act between maintaining the historically appropriate materials and the new green materials and technologies. It was his belief that a balance could be found between those, but he did not anticipate the West University Neighborhood was going to start allowing historically inaccurate metal roofs.

It was moved by Council Member Leal, duly seconded and carried by a voice vote of 7 to 0, to close the public hearing.

Council Member Trasoff said this was heartbreaking. She said Mr. Stokes was very eloquent in his presentation and she felt for him in this circumstance. His green efforts made it even harder and she appreciated and valued that. The fact was that there was an entire neighborhood dependent on this and very specific steps to be taken. Mr. Sensibar did talk about having notified Mr. Stokes before the major house was done and the roof was still being worked on. It went through the Historic Zone Advisory Board on a five-to-one vote, the Tucson-Pima County Historical Commission Plans Review Subcommittee in May 2008 with a four-to-zero vote, the DSD Director's recommendation to uphold the decision, the Development Review Board on October 3, 2008, in a seven-to-zero vote, and the WUNA voted against the approval of the roof. She said she thought the protection of the neighborhood was incredibly important and she added she thought this should be respected if they were to rely on this to preserve the look and feel of Tucson's neighborhoods and the values of those homes. Council Member Trasoff said she believed it had to be done. It was not an easy motion to make, given the circumstances of Mr. Stokes, and she was sorry for that. However, the overwhelming public good was to affirm the DSD Director's decision which would have the effect of denying the Appeal and the HPZ application.

It was moved by Council Member Trasoff, duly seconded and carried by a voice vote of 7 to 0, to affirm the Development Services Department Director's decision to deny the Appeal and the HPZ application.

9. APPEAL: (S-08-17) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION - KABABEQUE, 845 EAST UNIVERSITY BOULEVARD #185 (MAYOR AND COUNCIL APPEAL CASE NO. S-08-003)

(NOTE: This item was taken out of order and considered after Item 7.)

10. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Walkup announced City Manager's communication number 4, dated January 6, 2009, was received into and made a part of the record.

Mayor Walkup asked for a motion to approve the appointments in the report.

It was moved by Council Member Glassman, duly seconded and carried by a voice vote of 7 to 0, to approve the appointment of Karen Zimmerman to the Fort Lowell Historic Zone Advisory Board.

11. ADJOURNMENT: 6:50 p.m.

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, January 13, 2009 at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 6th day of January 2009, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

RWR:tl:sl/rg